VANCOUVER
SEP 26 2025
REGISTRY

No. VLC-S-S-217586
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ACTION4CANADA, LINDA MORKEN, GARY MORKEN, JANE DOE, ILONA ZINK, VALERIE ANN FOLEY, PASTOR RANDY BEATTY, BRITTANY WILSON

PLAINTIFFS

AND:

HIS MAJESTY THE KING IN RIGHT BRITISH COLUMBIA, HIS MAJESTY THE KING IN RIGHT CANADA. PRIME MINISTER JUSTIN TRUDEAU, CHIEF PUBLIC HEALTH OFFICER THERESA TAM, DR. BONNIE HENRY, PREMIER JOHN HORGAN, DAVID EBY, ADRIAN DIX, MINISTER OF HEALTH, MIKE FARNWORTH, MINISTER OF PUBLIC SAFETY AND SOLICITOR GENERAL OMAR ALGHABRA, MINISTER OF TRANSPORT, VANCOUVER ISLAND HEALTH AUTHORITY, THE ROYAL CANADIAN MOUNTED POLICE (RCMP), AND THE ATTORNEY GENERAL OF CANADA, PETER KWOK, SOUTH COAST BRITISH COLUMBIA TRANSPORTATION AUTHORITY

SCSS

DEFENDANTS

NOTICE OF APPLICATION

Names of applicants: South Coast British Columbia Transportation Authority ("**Translink**") and Peter Kwok ("**Mr. Kwok**")

To: The Plaintiffs

TAKE NOTICE that an application will be made by the Applicants to the presiding judge or associate judge at the Courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia on the 20th day of October, 2025 at 9:45 am for the order set out in Part 1 below.

The applicants estimate that the application will take 1 day.

This matter is within the jurisdiction of an associate judge.

Part 1: ORDERS SOUGHT

1. That the claims against Translink and Mr. Kwok in the Further Amended Notice of Civil Claim ("**Amended Claim**") be struck, without leave to amend, pursuant to Rule 9-5(1); and

2. Costs.

Part 2: FACTUAL BASIS

I. INTRODUCTION

3. This is an application to strike the claims made against South Coast British Columbia Transportation Authority **("Translink")** and Peter Kwok ("**Mr. Kwok**") under Rule 9-5.

4. This is the second application to strike brought. The initial claim was struck with leave to amend in 2022.

II. PROCEDURAL HISTORY

5. The following is a summary of the procedural history:

   (a) In 2021, the Notice of Civil Claim was filed;

   (b) In 2022, Justice Ross struck the notice of civil claim, which was at the time 391 pages long, with leave to amend;

   (c) The plaintiffs subsequently unsuccessfully brought an appeal of Justice Ross's decision;

   (d) On December 12, 2024, the plaintiffs amended their claim; and

   (e) On August 6, 2025, the claim was again amended to properly name Translink.

III. CLAIM SUMMARY

6. While the plaintiffs culled their claim from the initial 391 pages, the claim nonetheless remains 54 pages long, is prolix, and does not establish a legal cause of action against Translink or Mr. Kwok.

7. With respect to the applicants, Translink and Mr. Kwok, the claim made against them is by the plaintiff Valerie Ann Foley("**Ms. Foley**"), where it is alleged (but not admitted), *inter alia*:

   (a) Ms. Foley was on skytrain without a mask;

   (b) Mr. Kwok began "harassing" her about not having a mask;

(c) Mr. Kwok did not accept Ms. Foley's claim to have an exemption; and

(d) Mr. Kwok and two other transit officers then assaulted Ms. Foley before handcuffing her and placing her in a police car.

Further Amended Notice of Civil Claim (the "**NOCC**") at para 4

8. In the relief sought section and legal basis section only charter damages are sought against Mr. Kwok and Translink.

NOCC at Part 2: Relief Sought para 118(c)

9. The South Coast British Columbia Transportation Authority (as defined earlier as Translink) is the entity that oversees the provision of public transportation services in the lower mainland of British Columbia.

10. The defendant, Peter Kwok, is a police constable with the South Coast British Columbia Transportation Authority Police Service.

Part 3: LEGAL BASIS

IV. <u>LEGAL PRINCIPLES: Rule 9-5</u>

11. An order striking the claim as against the applicants is sought under Rule 9-5(1). Rule 9-5(1) provides:

> **Scandalous, frivolous or vexatious matters**
> (1)At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition, or other document on the ground that
> (a) It discloses no reasonable claim or defence, as the case may be,
> (b) It is unnecessary, scandalous, frivolous, or vexatious,
> (c) It may prejudice, embarrass or delay the fair trial or hearing of the proceeding; or
> (d) It is otherwise an abuse of process of the court.

12. The applicants adopt the submissions of Canada and British Columbia as set out in their respective notices of application in entirety as to the striking of the claim as a whole without leave to amend on the basis that it discloses no reasonable claim, is scandalous, frivolous, and vexatious, is embarrassing, and is otherwise an abuse of the process of court.

13. Accordingly, the applicants only address within this application the lack of a reasonable claim as against Mr. Kwok and Translink, but nonetheless seek the striking of the claim on the additional grounds set forth by Canada and British Columbia

V. NO REASONABLE CLAIM AGAINST MR. KWOK

14. There is no reasonable claim raised against Mr. Kwok as charter damages may not be awarded against an individual.

15. As held in *Vancouver (City) v. Ward*, 2010 SCC 27 at para 22:

> An action for public law damages — including constitutional damages — lies against the state and not against individual actors.

See also: *Alter v The University of British Columbia*, 2024 BCSC 961 at para 51, and *Mason v. Turner*, 2014 BCSC 211 at para 116 and 117, aff'd 2016 BCCA 58

16. Accordingly, as the claim made against Mr. Kwok is only for charter damages, which are not available against individuals, it is bound to fail.

VI. NO REASONABLE CLAIM AGAINST TRANSLINK

17. There is no reasonable claim against Translink as the South Coast British Columbia Transportation Authority Police Service is the statutory body responsible for overseeing policing on transit, not Translink.

18. On an application to strike, the court is not bound to accept all facts as alleged as proven. While caution must be taken, it is not fundamentally wrong to look behind allegations in some cases.

Willow v. Chong, 2013 BCSC 1083 at para 19

19. The specific pleading linking Mr. Kwok to Translink is paragraph 25 of part 1 of the NOCC where the following is stated:

> The Defendant, Peter Kwok, is and was at all material times a South Coast British Columbia Transportation Authority officer with Badge #325.

20. The South Coast British Columbia Transportation Authority (as defined, Translink) is an authority which is continued and governed by the *South Coast British Columbia Transportation Authority Act*, SBC 1998, c 30 (the "***SCBCTA Act***").

21. Separate and apart from TransLink, the *SCBCTA Act* continues the South Coast British Columbia Transportation Authority Police Service and the South Coast British Columbia Transportation Authority Police Board. These are accordingly separate authorities.

22. The *South Coast British Columbia Transportation Authority Police Service Regulation* designates the South Coast Transportation Authority Police Service as a designated law enforcement entity under the *Police Act*.

23. As Translink is not the entity in charge of the South Coast British Columbia Transportation Authority Police Service it is not liable for the charter breaches of Mr. Kwok, as alleged but not admitted.

Part 4: MATERIAL TO BE RELIED ON

24. The notices of application and supporting materials filed in by the Province of British Columbia and Canada to strike the pleadings of plaintiffs scheduled to be heard on the same day.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days after service of this Notice of Application.

(a) file an Application Response in Form 33,

(b) file the original of every affidavit, and every other document, that

i. you intend to refer to at the hearing of this application, and

ii. has not already been filed in the proceeding, and

(c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:

i. a copy of the filed Application Response;

ii. a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;

Dated at the City of Vancouver, in the Province of British Columbia, this 26th day of September, 2025.

Liam Babbitt for Lindsay Kenney LLP
Solicitors for the Applicants

This Notice of Application is filed by Liam Y. Babbitt, of the law firm of Lindsay Kenney LLP, whose place of business and address for delivery is 1500 – 401 West Georgia Street, Vancouver, British Columbia V6B 5A1.

To be completed by the court only:

Order made

☐ in the terms requested in paragraphs _____ of Part 1 of this Notice of Application

☐ with the following variations and additional terms:

_____

_____

_____

_____

Date: _____

_____

Signature of ☐Judge ☐Associate Judge

APPENDIX

The following information is provided for data collection purposes only and is of no legal effect.

THIS APPLICATION INVOLVES THE FOLLOWING

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts
- ☒ none of the above